



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

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2008 MAY 27 AM 11:55
Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA080010**

Petitioner, Trustees of Boston University c/o ZVI Construction Co. LLC, applied to the Board of Appeals to construct additions to the existing building, to reconstruct an interior parking structure and provide additional off-site parking at 888 Commonwealth Avenue. On March 27, 2008 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of the Appeals and fixed May 15, 2008 at 7:00 p.m. at the Main Library, second floor as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published April 17, 2008 and April 24, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **Trustees of Boston University c/o ZVI Construction**

Location of Premises: **888 Commonwealth Avenue, Brookline**

Date of Hearing: **05/15/2008**

Time of Hearing: **07:15 p.m.**

Place of Hearing: **Hunneman Hall, 2nd Floor, Main Library**

A Public hearing will be held for a variance and/or a special permit from

5.09.1 5.09.2.h; Design Review; Special Permit

6.02.1; Table of Off-Street Parking Space Regulations; Variance

6.02.1.b; Off-Street Parking Regulations – Waiver of up to six spaces.

6.02.1.c; Dual Use parking in a common parking lot; Special Permit

6.03.1.b; Location of Required Off-Street Parking Facilities; Special Permit

6.04.2; Design of All Off-Street Parking Facilities; Special Permit Required

**6.04.3; Design of All Off-Street Parking Facilities;
Parking Facility Under Full-time attendant supervision; Special Permit**

6.04.4; Design of Off-Street Parking Facilities; Special Permit Required

6.04.12; Design of Off-Street Parking Facilities; Special Permit Required

6.07; Design and Layout of Off-Street Loading Facilities; Special Permit Required

8.02.2; Alteration or Extension; Special Permit Required

Of the Zoning By-Law to construction additions to the existing building, to reconstruct an interior parking structure and provide additional off-site parking.

At 888 Commonwealth Avenue, Brookline

Said Premises located in a G-2.0(CA) Commonwealth Avenue General Business Zoning District

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar

At:<http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the **ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, Ma 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.**

**Enid Starr
Jesse Geller
Robert DeVries**

Publish: 04/17/2008 and 04/24/2008

At the time and place specified in the notice, a public hearing was held by this Board.

Present at the hearing was Chair, Enid Starr and Board members Jesse Geller and Jonathan Book.

Mr. Patrick Watson-Hogan, President of ZVI Construction Co., and on behalf of the Trustees of Boston University ("B.U."), presented the case before the Board. Present with him was David Myers, A.I.A., the project architect and Keri Pike, Traffic Engineer with Howard/Stein-Hudson.

Mr. Watson-Hogan described the locus as a single story office and classroom building located between Commonwealth Avenue and Dummer Street, midway between St. Paul Street and Amory Street. The building currently houses The Kidney Center on the first floor, with B.U. classroom space and parking in the lower level accessed from Dummer Street. The site contains a private alleyway providing on-site parking and a connection between Commonwealth Avenue and Dummer Street.

Constructed in 1924 as an automobile showroom and garage, the front façade of the building along Commonwealth Avenue and a portion of the alley façade features elaborate segmental arches framed in cast stone with neo-classical and Gothic ornamental details. According to the Brookline Preservation Department, this portion of the building is “one of the most outstanding examples of automobile-related architecture surviving on Commonwealth Avenue”. The rear portion of the building is brick, and features little ornamentation. The surrounding neighborhood is characterized by commercial/office uses and the B.U. Campus along Commonwealth Avenue, and multifamily residential buildings to the rear of the building along Dummer Street.

The existing building is a flat roofed structure with approximately 28,500 s.f. on a lot containing approximately 40,320 s.f. On the lower level accessed from Dummer Street there is a below grade parking garage.

Mr. Watson-Hogan explained that B.U. is proposing to construct a two-story office addition above the existing single story office building. The interior of the existing building will be renovated to allow for the creation of ground-floor restaurant and/or retail tenant spaces with outdoor seating and planting beds along Commonwealth Avenue, and the relocation of The Kidney Center nearer to the Dummer Street side of the building. The existing classroom space in the basement will remain, and the parking area will be reconfigured to allow for additional parking spaces by utilizing a valet attendant and a “stacker” parking system. The underground parking area would be accessed via an existing curb cut and ramp off of Dummer Street. The proposed structure would total 73,113 s.f. of retail, office and educational space.

At the suggestion of the Design Advisory Team appointed by the Planning Board, Mr. Watson-Hogan noted that the two-story proposed office addition over the existing ornate façade along Commonwealth Avenue will be set back approximately 10 feet from the parapet wall of the ornamental arches in order to preserve the architectural character of the building.

The addition over the rear, less decorative portion of the building will match the footprint of the existing building.

As part of this proposal, the existing alleyway between Commonwealth Avenue and Dummer Street will be converted to a one-way driveway and improved to include a tree-lined, safe pedestrian pathway, exterior lighting, planting beds, angled parking spaces, bike racks, a loading area, and a patient drop-off/pick-up area for The Kidney Center.

Parking for consumers and employees will be provided in 80 on-site parking spaces; comprised of 10 spaces in the driveway, 2 spaces in the loading area, and 68 spaces in the underground garage. The parking facility will be under full time attendant supervision. In order to meet the parking requirements for the building, the applicant will be providing 53 parking spaces offsite at the Agganis Arena owned by B.U. This off-site parking is within 400 feet of the site.

Mr. Watson-Hogan noted that although this is deemed a Major Impact Project, it can be accomplished solely with special permit relief.

Mr. Watson-Hogan also noted that not only will this project achieve the preservation and restoration of an architectural asset to the Town but will allow it to generate substantial income due to the PILOT Program (payment in lieu of taxes) between B.U. and the Town of Brookline. The project is also consistent with the Zoning By-Law's stated purposes of promoting the public

health, safety, convenience and welfare and the Zoning By-Law's specific goals of (i) conserving the value of land and buildings, (ii) reducing the hazards from two-way travel in a limited area and providing for pedestrian safety and (iii) encouraging the preservation of historically and architecturally significant structures.

According to Mr. Watson-Hogan, zoning relief will be needed as follows:

- (i) Special Permit pursuant to Section 5.09.2.a; Design Review;
- (ii) Special Permit pursuant to Section 6.02.1.b; Off-Street Parking Regulations – Waiver of up to six spaces;
- (iii) Special Permit pursuant to Section 6.02.1.c; Dual Use parking in a common parking lot;
- (iv) Special Permit pursuant to Section 6.03.1.b; Location of Required Off-Street Parking Facilities;
- (v) Special Permit pursuant to Section 6.04.3; Design of All Off-Street Parking Facilities
- (vi) Special Permit pursuant to Section 6.04.2; Design of All Off-Street Parking Facilities and/or 6.04.4; Design of Off-Street Parking Facilities;
- (vii) Special Permit pursuant to Section 6.04.12; Design of Off-Street Parking Facilities;
- (viii) Special Permit pursuant to Section 8.02.2; Alteration or Extension.

Polly Selkoe, Assistant Director for Regulatory Planning, presented the comments of the Planning Board as contained in its report dated May 1, 2008 which comments are as follows:

The Planning Board supports this proposal to add two stories to this building. The renovation and expansion will include: 1) improving the vitality of the Commonwealth Avenue streetscape by moving The Kidney Center to the rear of the building and putting a restaurant with outdoor seating on the front, 2) improving the circulation and parking on the alleyway between Commonwealth and Dummer Street by making it one way and providing space for drop-off of patients and ambulances coming to The Kidney Center, and 3) providing a design that respects the architectural features of the ground story by setting back the additional floors from the parapet on the Commonwealth Avenue side. The Applicant worked closely with the Town's Design Advisory Team and responded to its concerns by making significant revisions to the design.

The Traffic Report (1/31/08) by Howard/Stein-Hudson Associates was evaluated by the Town's traffic consultant, Beta Group and Beta agrees that the traffic impacts can be minimized by having the applicant provide the mitigation measures in condition #5 below, and the Applicant has agreed to these.

Therefore, the Planning Board recommends approval of the plans dated 12/28/07, prepared for ZVI Construction, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans for the building, indicating façade details, colors, materials, and location of rooftop utilities for HVAC and transformers, shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, final site and landscaping plans including the portion of Commonwealth Avenue in front of the building and the portion of Dummer Street at the rear of the building, indicating landscaping, parking layout; fencing; lighting; drainage details shall be submitted for the review and approval of the Assistant Director or Regulatory Planning.
3. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, shall be submitted for review and approval by the Transportation Director, with a copy of the approved plan submitted to the Planning Department.
4. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction and initial leasing period, with the design subject to the review and approval of the Assistant Director for Regulatory Planning.
5. Prior to the issuance of the Certificate of Occupancy, the following traffic mitigation measures shall be completed by the Applicant, subject to the review and approval of the Director of Engineering and Transportation and the Assistant Director of Regulatory Planning:
 - . Install "Don't Block the Box" signing and pavement markings at the intersection of Dummer Street and St. Paul Street;
 - . Install new signing for the parking meters on the east side of Pleasant Street between Dummer Street and Commonwealth Avenue indicating a parking restriction from 8 a.m. – 10 a.m. as well as 4 p.m. – 6 p.m., subject to the approval of the Brookline Transportation Board.
 - . Should the additional afternoon parking restriction be approved by the Brookline Transportation Board, provide monetary compensation for loss of revenue from the parking meters on the east side of Pleasant Street between Dummer Street and Commonwealth Avenue, as determined by the Director of Engineering and Transportation;
 - . Monitor the following intersections at 6 months post-occupancy and at 12 months post-occupancy:

- Commonwealth Avenue/St. Paul Street
- Commonwealth Avenue/site driveway;
- Dummer Street/side driveway; and
- Dummer Street/garage ramp entrance.

. Following each monitoring period, update the traffic impact study to reflect the monitored traffic volumes and revised capacity analysis. The revised study shall be provided to the Planning and Community Development and Engineering and Transportation Departments for review and approval.

. Provide an escrow or bond of \$30,000 to the Town of Brookline for the possible replacement of the traffic signal controller and cabinet at the intersection of Commonwealth Avenue and St. Paul Street. In the event that the traffic monitoring post-occupancy indicates that the Project traffic volumes exceed the estimated volumes in the Howard/Stein-Hudson Associates base line report, dated 1/31/08, the Applicant shall forfeit some or all of the escrow or bond as determined by the Director of Engineering and Transportation; Should the monitoring program indicate that the traffic volumes are less than estimated in the Howard/Stein-Hudson Associates report, dated 1/31/08, the Town shall return the escrow or bond to the Applicant in full, as determined by the Director of Engineering and Transportation.

6. Prior to the issuance of a Certificate of Occupancy, the applicant shall negotiate an agreement between Boston University and the Town's Director of Finance related to Payment in Lieu of Taxes (PILOT) to the Town, in a form subject to the review and approval of Town Counsel, and approved by the Board of Selectmen.
7. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor 2) final building elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.
8. Off-site parking for 53 cars shall be provided at all times for the users of 888 Commonwealth Avenue.

The Building Commissioner Michael Shepard expressed support for the project stating that the Building Department has no concern with respect to the conditions contained in the Planning Board report other than condition 6 concerning the PILOT program. He opined that if this Board agreed, Section 6.04.12 could cover all dimensional relief for off-street parking.

With respect to the required Special Permits, the Board makes the following findings pursuant to Section 9.05, and other relevant provisions of the Zoning By-Law:

1. The specific site is an appropriate location for such a use, structure or condition.
2. The use as developed will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.
6. The project meets the community impact and design review standards set forth in Section 5.09(4) of the Zoning By-Law.
7. New parking facilities are being installed to serve an existing structure, and the proposed parking facility dimensions are necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building.

In addition, the Board finds that all of the required parking relief can be accomplished by issuing two special permits under Sections 6.04.12 and 6.02.1.c. Therefore, the Board makes no findings as to the other special permits requested relative to parking.

The Board, having deliberated and reviewed the foregoing testimony and the relief required, supports this proposal to add two stories to the existing structure as being consistent with the development of an architecturally significant structure and approves the project as shown on the plans dated 12/28/07 by David Myers, AIA.

We note the Planning Board's recommendation for a condition requiring a Payment in Lieu of Taxes (PILOT) agreement between the University and the Town. Since the Town Administrator has advised us that there is already a PILOT Agreement in effect for the current fiscal year for the subject property, and the applicant has stated to the Department of Planning and Community Development that Boston University has agreed to negotiate in good faith a long term PILOT agreement with the Town prior to requesting their Certificate of Occupancy, there is no need to impose this requirement as a condition, assuming that the Zoning Board of Appeals has jurisdiction in the first instance.

Therefore, the Board votes unanimously to grant all the required Special Permits subject to the following conditions:

- 1. Prior to the issuance of a building permit, final plans for the building, indicating façade details, colors, materials, and location of rooftop utilities for HVAC and transformers, shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to the issuance of a building permit, final site and landscaping plans including the portion of Commonwealth Avenue in front of the building and the portion of Dummer Street at the rear of the building, indicating landscaping, parking layout; fencing; lighting; drainage details shall be submitted for the review and approval of the Assistant Director or Regulatory Planning.**
- 3. Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, shall be submitted for review and approval by the Transportation Director, with a copy of the approved plan submitted to the Planning Department.**
- 4. One temporary construction and/or development sign, no greater than 20 square feet, may be erected on site during the construction and initial leasing period, with the design subject to the review and approval of the Assistant Director for Regulatory Planning.**
- 5. Prior to the issuance of the Certificate of Occupancy, the following traffic mitigation measures shall be completed by the Applicant, subject to the review and approval of the Director of Engineering and Transportation and the Assistant Director of Regulatory Planning:**
 - . Install "Don't Block the Box" signing and pavement markings at the intersection of Dummer Street and St. Paul Street;**
 - . Install new signing for the parking meters on the east side of Pleasant Street**

between Dummer Street and Commonwealth Avenue indicating a parking restriction from 8 a.m. – 10 a.m. as well as 4 p.m. – 6 p.m., subject to the approval of the Brookline Transportation Board.

- . Should the additional afternoon parking restriction be approved by the Brookline Transportation Board, provide monetary compensation for loss of revenue from the parking meters on the east side of Pleasant Street between Dummer Street and Commonwealth Avenue, as determined by the Director of Engineering and Transportation;
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- Commonwealth Avenue/site driveway;
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- . Following each monitoring period, update the traffic impact study to reflect the monitored traffic volumes and revised capacity analysis. The revised study shall be provided to the Planning and Community Development and Engineering and Transportation Departments for review and approval.

- . Provide an escrow or bond of \$30,000 to the Town of Brookline for the possible replacement of the traffic signal controller and cabinet at the intersection of Commonwealth Avenue and St. Paul Street. In the event that the traffic monitoring post-occupancy indicates that the Project traffic volumes exceed the estimated volumes in the Howard/Stein-Hudson Associates base line report, dated 1/31/08, the Applicant shall forfeit some or all of the escrow or bond as determined by the Director of Engineering and Transportation; Should the monitoring program indicate that the traffic volumes are less than estimated in the Howard/Stein-Hudson Associates report, dated 1/31/08, the Town shall return the escrow or bond to the Applicant in full, as determined by the Director of Engineering and Transportation.

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7. Off-site parking for 53 cars shall be provided at all times for the users of 888 Commonwealth Avenue.

Unanimous Decision of
The Board of Appeals


Enid Starr

Filing Date: May 23, 2008

A True Copy:

ATTEST

Patrick J. Ward
Clerk
Board of Appeals

Twenty days have elapsed and no appeal
has been filed.

A True Copy
ATTEST

Patrick Ward
Town Clerk